

**Maryland State Programmatic General Permit-2  
(MDSPGP-2)**

**2 1/2-Year Monitoring Report  
June 2005**

**Prepared by  
The U.S. Army Corps of Engineers  
and  
The Maryland Department of the Environment**

**MARYLAND PROGRAMMATIC GENERAL PERMIT-2 (MDSPGP-2)**  
**2 ½ -YEAR MONITORING REPORT**

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## **MARYLAND PROGRAMMATIC GENERAL PERMIT-2 (MDSPGP-2) 2 ½-YEAR MONITORING REPORT**

### **I. PURPOSE**

The MDSPGP-2 requires the preparation of a 2 ½-year monitoring report to evaluate the existing MDSPGP-2 program. The purpose is to determine whether modification, suspension, or revocation of the MDSPGP-2 is appropriate.

### **II. BACKGROUND**

Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a statewide permit program, administered by the Maryland Department of the Environment (MDE), for protecting Maryland waters. MDE's criteria for evaluating applications for permits and licenses are equivalent to Federal criteria required under Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act, including the 404(b)(1) Guidelines, which require analysis of alternative sites, avoidance and minimization of impacts on-site, and compensatory mitigation for unavoidable impacts.

Based upon the availability of this comparable State program, the U.S. Army Corps of Engineers, Baltimore District (Corps), coordinated with MDE and other Federal and State resource agencies, and the public, to develop a statewide programmatic general permit, the Maryland State Programmatic General Permit (MDSPGP-1). The goals of the MDSPGP-1 and later the MDSPGP-2 are to protect the aquatic resources of the State of Maryland within the Baltimore District's regulatory boundaries; reduce the administrative burden of the Regulatory program for both the Corps and MDE through interagency cooperation; improve Regulatory response time and; add predictability to the permit program, within specified limits, for the applicant and the general public.

On May 6, 1996, the Baltimore District issued the first Maryland State Programmatic General Permit (MDSPGP-1) for a five-year period. The MDSPGP-1 was extended on May 15, 2001, and expired on September 30, 2001.

On September 15, 2000, the District Engineer issued Special Public Notice #00-36 requesting comments on whether to: (1) reissue the MDSPGP-1 with modifications as the MDSPGP-2, (2) reissue without modifications for a five-year period, or (3) not reissue the MDSPGP-1. Following a thorough review of all comments received in response to the special public notice and a public hearing held on October 24, 2000, the Corps decided to reissue the MDSPGP-1 with modifications as the MDSPGP-2.

The decision to reissue the MDSPGP-1 with modifications as the MDSPGP-2 was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed MDSPGP-2 on the public interest. This decision reflected the national concern for the protection and utilization of important resources. All factors which were relevant to the MDSPGP-2 were considered including the cumulative effects thereof; among those were conservation, economics, aesthetics, general environmental concerns, wetlands, cultural resources, fish and wildlife values, essential fish habitat, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water

supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

The MDSPGP-2 was issued by Colonel Charles J. Fiala, Jr., District Engineer for the Baltimore District. The MDSPGP-2 was implemented and in full effect within the State of Maryland on October 1, 2001. It is valid for 5 years and expires on September 30, 2006. A copy of the MDSPGP-2 can be viewed on the Baltimore District web site: <http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>. Interested persons who do not have access to the Internet, but who would like to review the MDSPGP-2, may request a copy of this document by calling Mrs. Maria Lasek at (410) 962-4501.

The MDSPGP-2 is applicable for regulated activities in waters of the United States, including jurisdictional wetlands, in the State of Maryland that are located within the geographic regulatory boundaries of the Baltimore District except for the following which fall within the Corps' Philadelphia District's regulatory boundaries: Back Creek (of the Chesapeake and Delaware Canal) and Herring Creek in Cecil County; and tidal waters in Cecil County, east of a line extending from Welch Point to Courthouse Point.

### **III. Report and Evaluation Requirements**

The MDSPGP-2, Part VII D, requires that:

1. MDE will provide quarterly and a more comprehensive yearly report to the Baltimore District Engineer describing its implementation of the MDSPGP-2. These reports shall include information on the types and numbers of activities authorized under the MDSPGP-2, including specific types and numbers of activities authorized under Categories III.A and III.B, the impacts authorized, evaluation times, mitigation required and completed, State enforcement and compliance activities, and other data, as required. These reports will be available to the public.
2. Every two and one-half years, the Corps, with recommendations from the resource agencies, will evaluate the MDSPGP-2, including its terms and conditions, and will determine if: (1) the MDSPGP-2 has met its intended goal of reducing duplication; (2) authorizations/verifications comply with applicable laws and regulations; and (3) only projects with minimal adverse environmental effects were verified. Every two and one-half years, coordinated with the required 5-year cycle of MDSPGP-2 reissuance, based on this review and evaluation, the Corps will further determine whether modification, suspension, or revocation of the MDSPGP-2 is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

### **IV. Agency Coordination**

MDE and the Corps met four times over the past two and a half years to address procedural and case-specific concerns related to the administration and implementation of the MDSPGP-2. Agenda items were submitted by both MDE and the Corps. The Corps created minutes of the meetings and distributed them to MDE and Corps staff.

The following are examples of issues coordinated at the meetings:

1. Various RAMS (Corps' permit tracking data base) data entry procedures (i.e. impact data, section codes, categorization)
2. Interagency coordination procedures for category changes
3. Corps and MDE MDSPGP-2 mailing responsibilities
4. Incomplete application procedures emphasizing timeliness
5. Coordination between MDE and Corps staffs regarding pre-application meetings, stressing that one agency's project managers should not speak on behalf of the agency not in attendance or provide advice on the other agency's permit requirements or procedures.
6. Procedures for retrieving Category I activity files from MDE's Compliance Section after an action had already been finalized
7. Historic Preservation coordination procedures on Category I projects with Section 106 issues
8. Coordination process between MDE Dam Safety and the Corps for applications that are reviewed and/or authorized solely by MDE Dam Safety to ensure MDSPGP-2 authorization is issued, at several meetings
9. Procedures for reauthorizing/extending MDSPGP-2 verifications of Category I activities or Category III activities; reauthorizing/extending MDSPGP-1 verifications of Category I activities; and reauthorizing/extending MDSPGP-1 verifications of Category III activities (IIIA and IIIB)
10. Minor revisions to the Corps' final Category III letter and self-certification form to clarify effective date of MDSPGP-2 and address authorization extensions
11. Reminder for MDE and Corps staffs that Joint Federal/State Application Information (JAI) forms are internal agency forms and are not to be sent to the applicant/public
12. Procedures for identifying "area of review" (jurisdictional area) on permit plans, especially for Category I activities, so that the applicant does not assume that delineation of streams and wetlands on the entire site have been approved
13. Revisions to Attachment 5 (RAMS Data Entry Requirements for Project Managers) of the Standard Operating Procedures (SOP) to clarify impact data for reporting purposes
14. Coordination between MDE Compliance staff and Corps Enforcement staff regarding violations.
15. MDSPGP-2 authorizations should not be done via e-mail.

Corps Enforcement staff coordinated a meeting with MDE Compliance staff to refine the coordination process for enforcement actions and clarified that no after-the-fact permits, regardless of how minor, would be authorized under the MDSPGP-2 without coordination with Corps Enforcement staff.

In addition, the Corps coordinated a meeting with MDE, the United States Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS) and the Maryland Department of Natural Resources (DNR) to fine-tune Attachment 2 of the SOP (Endangered Species Coordination). Since the Corps has designated DNR as its non-Federal representative for the purpose of conducting initial coordination with FWS and NMFS pursuant to Section 7 of the Endangered Species Act (ESA), several items regarding process needed to be addressed. These items included clarification of the interagency initial review process, and suggested revisions to the SOP regarding endangered species coordination by DNR.

## **V. Data from Monitoring Period, October 1, 2001 through September 30, 2003**

The first two years of the MDSPGP-2, October 1, 2001 through September 30, 2002 (Year 1) and October 1, 2002 through September 30, 2003 (Year 2), are the subject of this monitoring report. Information considered in this report was obtained from the two annual reports that were compiled by the MDE (Attachments 1 and 2) and provided to the Corps in accordance with the terms and condition of the MDSPGP-2. Summaries of some of MDE's data are provided in Tables 1 and 2 on pages 7 through 10 of this report. Data was also collected from the Corps' regulatory database, RAMS, and a review of Corps files. Table 3 on page 11 summarizes the total number of applications for the first two years that received MDSPGP-2 verification, as provided by the RAMS database.

Tables 1 and 2 below represent data provided by MDE for **YEAR 1, October 1, 2001 through September 30, 2002** and **YEAR 2, October 1, 2002 through September 30, 2003**. Table 3 summarizes the total number of times a specific Category I activity(s), is (are) used for nontidal (NT) and tidal (T) projects, as well as by county. *Please note that an application may receive Category I verification using more than one Category I activity, as allowed. Therefore, the total number of applications receiving Category I verification is less than the total number Category I activities used. Also note, those activities listed below with a single T or NT (not both) means that this activity is applicable for tidal or nontidal use only.*

**TABLE 1:** Data provided by MDE for *YEAR 1, October 1, 2001 through September 30, 2002*

<b>MDSPGP-2 Category I Activities</b>																		
<b>County</b>	I(A)1	I(A)3	I(B)2		I(C)1		I(C)2		I(C)3		I(D)1	I(D)2		I(D)3		I(D)4	I(D)5	
	NT	T	T	NT	T	NT	T	NT	T	NT	NT	T	NT	T	NT	NT	T	NT
Allegheny	0	-	-	1	-	7	-	0	-	0	2	-	2	-	1	0	-	0
Anne Arundel	0	0	0	0	0	2	1	0	60	0	28	0	2	0	6	0	0	0
Baltimore	0	0	0	0	6	6	0	1	22	0	11	0	2	0	7	0	0	0
Baltimore City	0	0	0	0	4	0	0	0	1	0	0	0	1	0	0	1+1**	0	0
Calvert	0	0	0	0	3	2	0	0	2	0	3	0	0	0	4	0	0	0
Caroline	2	0	0	0	0	0	0	0	0	0	3	0	0	0	8	0	0	0
Carroll	0	-	-	0	-	15	-	0	-	0	4	-	2	-	5	0	-	0
Cecil	0	0	0	0	1	3	0	0	4	0	3	0	0	0	7	0	0	0
Charles	0	0	0	0	0	0	0	0	3	0	3	0	1	0	3	0	0	0
Dorchester	0	0	0	0	9	0	0	0	10	0	7	0	0	0	0	0	2	0
Frederick	0	-	-	1	-	14	-	1	-	0	1	-	4	-	5	0	-	3
Garrett	0	-	-	0	-	2	-	0	-	0	0	-	4	-	3	0	-	0
Harford	0	0	0	0	0	5	0	3	2	0	2	0	3	0	8	0	0	0
Howard	0	-	-	1	-	5	-	3	-	0	7	-	10	-	7	0	0	0
Kent	1	0	0	0	0	2	0	0	5	0	2	0	0	0	0	0	0	0
Montgomery	0	-	-	0	-	7	-	0	-	0	3	-	8	-	4	0	-	0
Prince Georges	0	0	0	0	1	4	0	0	0	0	8	0	6	0	10	0	0	0
Queen Anne's	1	0	0	0	2	1	0	4	12	0	14	0	1	0	2	0	0	0
Somerset	0	1	0	0	1	0	0	0	2	0	5	0	0	0	0	0	0	0
St. Mary's	0	0	0	0	0	2	0	0	11	0	2	0	0	0	3	0	0	0
Talbot	0	0	0	0	0	0	0	0	18	0	10	0	0	0	2	0	1	0
Washington	0	-	-	0	-	11	-	0	-	0	5	-	0	-	3	0	-	0
Wicomico	0	0	0	0	0	1	1	0	2	0	2	0	0	0	1	0	0	0
Worcester	0	0	1	0	1	1	0	0	109	0	51	0	0	0	1	0	0	0
<b>TOTAL</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>28</b>	<b>90</b>	<b>2</b>	<b>12</b>	<b>263</b>	<b>0</b>	<b>176</b>	<b>0</b>	<b>46</b>	<b>0</b>	<b>90</b>	<b>1+1**</b>	<b>3</b>	<b>3</b>

**KEY:** (A)1-Agricultural Production; (A)3-Tide Gates; (B)2-Scientific Measurement Devices; (C)1-General Maintenance; (C)2-Armoring Bridges, Causeways & Culverts; (C)3-Bulkhead Repair or Replacement; (D)1-Minor Nontidal Fills; (D)2-Underground & Utility Lines;(D)3-Road Crossings; (D)4-Structural Discharges; (D)5-Dry Fire Hydrants;

\* Nontidal activity authorized by this Category I activity which covers tidal waters and/or wetlands only.

\*\* Tidal activity authorized by this Category I activity which covers nontidal waters and/or wetlands only.

**TABLE 1:** Data provided by MDE for *YEAR 1, October 1, 2001 through September 30, 2002* (continued)**MDSPGP-2 Category I Activities**

<i>County</i>	I(D)6		I(D)8	I(D)9		I(F)3	I(F)4	I(F)5		I(F)6	I(F)7	I(G)1	I(G)2	I(G)3	I(G)4	I(G)5	<i>TOTAL</i>
	T	NT	NT	T	NT	T	T	T	NT	T	T	T	T	T	T	NT	
Allegheny	-	0	0	-	3	-	-	-	1	-	-	-	-	-	-	0	<b>17</b>
Anne Arundel	0	0	0	0	4	225	4	2	0	5	0	7	58	24	1	1	<b>430</b>
Baltimore	1	0	0	1	1	73	1	0	0	0	0	2	10	0	0	5	<b>149</b>
Baltimore City	0	0	0	0	0	2	0	0	0	0	0	0	1	1	1	0	<b>13</b>
Calvert	0	0	0	0	0	30	1	1	0	0	0	4	10	0	0	1	<b>61</b>
Caroline	0	0	0	0	1	10	0	0	0	0	0	0	5	0	0	0	<b>29</b>
Carroll	-	0	0	-	0	-	-	-	0	-	-	-	-	-	-	1	<b>27</b>
Cecil	0	0	1	0	0	13	0	4	0	0	0	2	6	0	0	0	<b>44</b>
Charles	0	0	0	0	2	17	0	1	0	0	0	0	3	1	1	0	<b>35</b>
Dorchester	0	0	0	0	0	53	1	0	0	0	0	3	25	4	0	0	<b>114</b>
Frederick	-	0	0	-	0	-	-	-	0	-	-	-	-	-	-	4	<b>33</b>
Garrett	-	0	0	0	0	-	-	-	0	-	-	-	- 1*	-	-	5	<b>15</b>
Harford	0	0	0	0	2	14	0	0	0	0	0	0	1	0	0	0	<b>40</b>
Howard	-	0	0	-	1	-	-	-	0	-	-	-	-	-	-	0	<b>34</b>
Kent	0	0	0	0	0	24	0	1	0	0	0	0	18	4	0	0	<b>57</b>
Montgomery	-	0	0	-	2	- 1*	-	-	0	-	-	-	-	-	-	3	<b>28</b>
Prince Georges	0	0	0	0	2	2	0	0	0	0	0	0	0	0	0	1	<b>34</b>
Queen Anne's	0	0	2	0	1	64	2	0	0	1	1*	0	16	3	0	1	<b>128</b>
Somerset	0	0	0	0	0	23	0	0	0	0	0	3	12	0	0	0	<b>47</b>
St. Mary's	0	0	0	0	2	84	2	1	0	0	0	5	21	3	3	1	<b>140</b>
Talbot	0	0	0	0	0	62	1	3	0	0	0	5	45	10	3	1	<b>161</b>
Washington	-	0	0	-	0	-	-	-	0	-	-	-	-	-	-	1	<b>20</b>
Wicomico	0	0	0	0	0	14	0	0	0	0	0	0	4	0	0	0	<b>25</b>
Worcester	0	0	0	1	0	335	0	1	0	0	0	7	34	2	0	0	<b>544</b>
<b>TOTAL</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>21</b>	<b>1045+1*</b>	<b>12</b>	<b>14</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>38</b>	<b>269+1*</b>	<b>52</b>	<b>9</b>	<b>25</b>	<b>2225</b>

**KEY:** (D)6-Clearing Debris & Windfalls (D)8-Temporary Stream Diversion for Construction; (D)9-Outfall Structures; (F)3-Piers; (F)4-Marina Reconfiguration; (F)5-Boat Ramp Construction, Repair & Expansion; (F)6-Mooring Buoys; (F)7-Structures in Fleeting & Anchorage Areas; (G)1-Revetment/Bulkhead Armoring; (G)2-New Revetments; (G)3-Tidal Marsh Creation; (G)4-Tidal Shoreline Erosion Control Structures (Not Revetments); (G)5-Nontidal Bank Stabilization

\* Nontidal activity authorized by this Category I activity which covers tidal waters and/or wetlands only.

\*\* Tidal activity authorized by this Category I activity which covers nontidal waters and/or wetlands only.



**TABLE 2:** Data provided by MDE for *YEAR 2, October 1, 2002 through September 30, 2003*

<b>MDSPGP-2 Category I Activities</b>															
<i>County</i>	I(A)3	I(C)1		I(C)2		I(C)3		I(D)1	I(D)2		I(D)3		I(D)5		I(D)8
	T	T	NT	T	NT	T	NT	NT	T	NT	T	NT	T	NT	NT
Allegheny	-	-	7	-	0	-	0	0	-	2	-	2	-	0	0
Anne Arundel	0	18	3	0	0	59	0	7	0	3	0	8	0	0	0
Baltimore	0	1	8	0	2	28	0	5	0	8	0	3	0	0	0
Baltimore City	0	3	4	0	0	1	0	0	0	2	0	0	0	0	0
Calvert	0	1	0	0	0	5	0	2	0	0	0	3	0	0	0
Caroline	0	0	0	1	0	0	0	6	0	0	0	5	0	0	0
Carroll	-	-	9	-	0	-	0	1	-	2	-	6	-	2	0
Cecil	0	0	4	0	0	5	0	1	0	5	0	5	0	0	0
Charles	0	0	1	0	0	4	0	2	0	2	0	1	0	0	0
Dorchester	0	4	2	0	0	12	0	8	0	0	0	0	0	0	0
Frederick	-	-	13	-	0	-	0	4	-	1	-	25	-	1	0
Garrett	-	-	4	-	1	-	0	1	-	2	-	2	-	0	0
Harford	0	1	10	0	0	3	0	3	0	2	0	10	0	0	0
Howard	-	-	0	-	0	-	0	3	-	7	-	3	-	0	0
Kent	0	0	0	0	0	3	0	3	0	0	0	0	0	0	0
Montgomery	-	-	10	-	0	-	0	2	-	12	-	8	-	0	0
Prince Georges	0	0	9	0	0	0	0	9	0	8	0	5	0	0	0
Queen Anne's	0	0	0	0	0	14	0	24	0	0	0	0	3	0	0
Somerset	1	0	1	0	1	4	0	2	0	0	0	0	0	0	0
St. Mary's	0	0	4	0	0	8	0	5	0	2	0	5	0	0	0
Talbot	0	7	1	0	1	12	0	7	1	0	0	3	0	0	0
Washington	-	-	4	-	0	-	0	2	-	4	-	3	-	0	0
Wicomico	0	2	3	1	0	0	0	6	0	0	0	0	0	0	0
Worcester	0	1	2	0	0	114	0	28	0	1	0	0	0	0	0
<b>TOTAL</b>	<b>1</b>	<b>38</b>	<b>99</b>	<b>2</b>	<b>5</b>	<b>272</b>	<b>0</b>	<b>131</b>	<b>1</b>	<b>63</b>	<b>0</b>	<b>97</b>	<b>3</b>	<b>3</b>	<b>0</b>

**KEY:** (A)3-Tide Gates; (C)1-General Maintenance; (C)2-Armoring Bridges, Causeways & Culverts; (C)3-Bulkhead Repair or Replacement; (D)1-Minor Nontidal Fills; (D)2-Underground & Utility Lines; (D)3-Road Crossings; (D)5-Dry Fire Hydrants; (D)8-Temporary Stream Diversion for Construction

**TABLE 2:** Data provided by MDE for *YEAR 2, October 1, 2002 through September 30, 2003* (continued)**MDSPGP-2 Category I Activities**

<i>County</i>	I(D)9		I(E)2		I(E)3	I(F)3	I(F)4	I(F)5		I(F)6	I(F)7	I(G)1	I(G)2	I(G)3	I(G)4	I(G)5	<i>TOTAL</i>
	T	NT	T	NT	T	T	T	T	NT	T	T	T	T	T	T	NT	
Allegheny	-	0	-	0	-	-	-	-	0	-	-	-	-	-	-		<b>11</b>
Anne Arundel	1	0	0	0	0	269	2	2	0	2	0	13	56	33	2	1	<b>479</b>
Baltimore	0	1	0	0	0	61	0	0	0	0	0	2	9	0	0	2	<b>130</b>
Baltimore City	0	1	0	0	0	1	0	0	0	0	0	1	1	0	0	0	<b>14</b>
Calvert	0	0	0	0	0	32+4*	1	1	0	1	0	3	18	4	1	0	<b>76</b>
Caroline	0	0	0	0	0	8	0	1	0	0	0	0	4	1	0	0	<b>26</b>
Carroll	-	0	-	0	-	-	-	-	0	-	-	-	-	-	-	0	<b>20</b>
Cecil	0	0	0	0	0	27	0	1	0	0	0	0	5	0	0	1	<b>54</b>
Charles	1	0	0	0	0	27+1*	1	1	0	0	0	4	16	0	0	0	<b>61</b>
Dorchester	0	0	0	0	0	57	0	2	0	0	1	1	25	0	2	0	<b>114</b>
Frederick	-	0	-	0	-	-	-	-	1	-	-	-	-	-	-	1	<b>46</b>
Garrett	-	1	-	0	-	-	-	-	0	-	-	-	-	-	-	18	<b>29</b>
Harford	0	0	0	0	0	21	0	0	0	0	0	0	2	0	0	0	<b>52</b>
Howard	-	1	-	0	-	-	-	-	0	-	-	-	-	-	-	0	<b>14</b>
Kent	0	0	0	0	0	26	0	1	0	0	0	0	2	4	0	0	<b>39</b>
Montgomery	-	4	-	0	-	-	-	-		-	-	-	-	-	-	5	<b>41</b>
Prince Georges	0	7	0	0	0	7	0	0	0	0	0	1	0	0	0	1	<b>47</b>
Queen Anne's	1	0	0	0	0	52	1	1	0	1	0	2	16+1*	1	0	0	<b>117</b>
Somerset	0	0	0	0	0	30	0	1	0	0	0	0	18	1	0	0	<b>59</b>
St. Mary's	0	0	0	0	0	78	1	2	0	0	0	5	38	4	1	0	<b>153</b>
Talbot	0	0	2	0	2	76	0	3	0	0	0	6	51	8	1	0	<b>181</b>
Washington	-	0	-	0	-	-	-	-	0	-	-	-	-	-	-	1	<b>14</b>
Wicomico	0	0	0	0	0	18	1	0	0	0	0	0	7	0	0	0	<b>38</b>
Worcester	4	0	0	0	0	326	0	1	0	0	0	1	33	0	0	0	<b>511</b>
<b>TOTAL</b>	<b>7</b>	<b>15</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>1116+5*</b>	<b>7</b>	<b>17</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>39</b>	<b>301+1*</b>	<b>56</b>	<b>7</b>	<b>30</b>	<b>2326</b>

**KEY:** (D)9-Outfall Structures; (E)2- Fish & Wildlife Harvesting Devices; (E)3-Bass Spawning Boxes; (F)3-Piers; (F)4-Marina Reconfiguration; (F)5-Boat Ramp Construction, Repair & Expansion; (F)6-Mooring Buoys; (F)7-Structures in Fleeting & Anchorage Areas; (G)1-Revetment/Bulkhead Armoring; (G)2-New Revetments; (G)3-Tidal Marsh Creation; (G)4-Tidal Shoreline Erosion Control Structures (Not Revetments); (G)5-Nontidal Bank Stabilization

\* Nontidal activity authorized by this Category I activity which covers tidal waters and/or wetlands only.

**TABLE 3:** The data shown in the table below is obtained from the Corps' RAMS database. It summarizes the total number of applications receiving MDSPGP-2 verification for the two year monitoring period of October 1, 2001 through September 30, 2003. It also summarizes the total number of applications verified as a Category I activity(s) or Category III, distinguishing between tidal or nontidal.

*Please note that an application may receive Category I verification using more than one Category I activity, as allowed.*

Applications	Category I	Category III		<b><i>TOTAL</i></b>
		A	B	
Tidal	3039	176	248	<b><i>3463</i></b>
Nontidal	891	250	114	<b><i>1255</i></b>
<b><i>TOTAL</i></b>	<b><i>3930</i></b>	<b><i>788</i></b>		<b><i>4718</i></b>

*Evaluation Times:* MDE's annual monitoring reports show that the median processing times in Year 1 were 36 days for Category I projects and 104 days for Category III projects for tidal applications, and 84 days for Category I projects and 273 days for Category III projects for nontidal applications. In Year 2, the median was 34 days for Category I and 123 days for Category III tidal projects, and 74 days for Category I and 306 days for Category III nontidal projects.

## **VI. Compliance with Regulations and Laws**

To address this item, the Corps referred to the Corps' RAMS database and a small number of files. For Category I projects, files of 107 applications that received MDSPGP-2 verification, were selected and supplemented with information from RAMS and courtesy copies of resource agency comments. These 107 applications were verified as using one or more of the top five, most frequently used Category I activities, breaking down to 46 tidal and 61 nontidal files. File contents were limited, consisting of copies of MDE's final authorizations that were provided to the Corps as specified by the MDSPGP-2 SOP. For Category III projects, two projects per Corps evaluator were randomly selected, one III A and one III B project, with the intent to review the different varieties of tidal and nontidal projects.

*Essential Fisheries Habitat (EFH) of the Magnuson-Stevens Act:* EFH requirements must be satisfied prior to authorization of any proposal affecting EFH under the MDSPGP-2. During development of the MDSPGP-2, the Corps consulted with NMFS and, based on NMFS' conservation recommendations, added conditions to a number of Category I activities. These additional conditions ensure that projects authorized under Category I, and those projects reviewed under Category II, which comply with all terms and conditions of the MDSPGP-2 and all activity-specific impact limits and conditions, will have no more than minimal effects on EFH. If the proposed work is constructed in accordance with the activity-specific limits and conditions, then it will have no more than minimal effects on EFH. Projects that are proposed in areas designated as EFH and that do not qualify for Category I of the MDSPGP-2, require a case-by-case EFH effect determination by the Corps under Category III. The review of Category III project applications includes coordination between NMFS and Corps through a notification process. For those projects that may impact EFH, the Corps is responsible for completing an EFH assessment, and revising the project and/or conditioning the project specific MDSPGP-2 verification if necessary so that it will have no more than minimal effects on EFH. Of the 52 Corps files that were randomly selected from Category III MDSPGP-2 verifications, 23 of the projects may have had the potential to impact EFH. Of these 23 files, 4 did not include any documentation indicating whether the Corps addressed EFH.

*Federal Endangered Species Act (ESA):* The MDSPGP-2 does not authorize any activity that may affect a federally-listed threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA); or which may destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and the procedures outlined in the MDSPGP-2. Joint permit applications are screened by MDE's Regulatory Services Coordination Office on their GIS for the potential presence of threatened or endangered (T&E) species or critical habitat within the vicinity of the proposed project site. Copies of those applications that receive a "hit" for the possible presence of federally- and/or state-listed T&E species are then forwarded to DNR's Natural Heritage Program for further investigation. MDE reported through their GIS screening that there were 575 potential occurrences ("hits") of sensitive species in tidal areas and 150 in nontidal areas during Year 1. In Year 2, there were 632 "hits" in tidal areas and 181 in nontidal areas. Sensitive species include both federally- and state-listed T&E species, and one can not distinguish by MDE's annual monitoring reports which of these "hits" are for federally-listed species.

It is assumed that a project qualifies for MDSPGP-2 Category I verification if the project does not receive a “hit” from MDE’s initial GIS screening, indicating there are no federal T&E species or their critical habitat that will likely be impacted by the proposed work. This is also the case for those that do receive a “hit” and are then followed up with a determination by MD DNR that the project will not affect any federally listed T&E species or critical habitat. If the screening concludes that there may be a T&E issue, the MDE is to advise the Corps, who shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. It is the Corps who must ensure that the ESA requirements have been satisfied and that the activity is eligible for MDSPGP-2 verification. Of the randomly selected 107 Category I projects verified by MDE, 19 received a screening “hit.” Of these 19 cases, there are no records for 10 of them in the RAMS database (including a closing date in the status code indicating the completion of the ESA review) that the project will not affect any federally listed T&E species or critical habitat. Since the Corps does not receive any copy of MD DNR’s determinations concerning their review of the initial screening “hits”, we are relying on MDE’s data entry to RAMS but assume that these “hits” have been adequately addressed by MDE and MD DNR.

Category III projects are reviewed with agency notification coordination between the MDE/Corps and MD DNR, NMFS, and the U.S. Fish and Wildlife Service (FWS). Of the 52 Corps files that were randomly selected from Category III MDSPGP-2 verifications, 11 of the projects received a “hit” from MDE’s GIS screening. Of these 11 applications, the Corps received further information and comments on 4 projects which were incorporated into project revisions and/or special conditions to the MDSPGP-2 as necessary. For the remaining 7 applications, the Corps assumed there were no T&E issues to be addressed since there were no further actions by MD DNR, NMFS, and/or FWS. It is assumed that this is typical of all Category III MDSPGP-2 verifications.

*Historic Properties:* All activities verified for authorization by the MDSPGP-2 shall comply with Section 106 of the National Historic Preservation Act. Joint permit applications are screened by MDE’s Regulatory Services Coordination Office on their GIS for the potential presence of historic resources within the vicinity of the proposed project site. A copy of those applications that receive a “hit” for the possible presence of historic resources are then forwarded to the Maryland Historic Preservation Office (MHT) who conducts an initial review and notifies the Corps and MDE with their recommendations whether there is a need for further investigation. The applicant may also indicate in their application the presence of a potential historic resource on site. These applications are also to be forwarded to MHT for their initial review. In addition to MDE’s and Corps’ evaluation of the potential impact proposed work may have on a known or unknown historic resource, the general conditions of the final MDSPGP-2 verification also requires the permittee, during construction of the authorized work, to comply with specific actions they must follow should they encounter a previously unidentified archaeological or other cultural resource within the permit area subject to Department of the Army (DA) jurisdiction that might be eligible for listing in the National Register of Historic Places. MDE reported through their GIS screening that there were 491 potential occurrences (“hits”) of cultural resources in tidal areas and 70 in nontidal areas during Year 1. In Year 2, there were 464 “hits” in tidal areas and 71 in nontidal areas.

It is assumed that a project qualifies for MDSPGP-2 Category I verification if the project does not receive a “hit” from MDE’s initial GIS screening, indicating there are no historic resources that will likely be impacted by the proposed work. This is also the case for those that do receive a “hit”

which is followed up with a determination by MHT that it is unlikely that the project will affect any historic resource. For those applications that indicate there is a known historic resource, or the conclusion of MHT's initial screening review indicates there is a potential resource, these projects are to be coordinated with the Corps to ensure that the Section 106 process is satisfactorily concluded. Of the 107 randomly selected Category I projects verified by MDE, 36 received a screening "hit." Of these 36 cases, there are no records for 6 of them, either in the RAMS database (including a closing date in the status code indicating the completion of the Section 106 review) or any statement by MHT, that the project is unlikely to affect any historic resources.

In addition to any initial screenings by MHT of Category III projects, MDE or the Corps also advises MHT of proposed work by agency notification. Of the 52 Corps files that were randomly selected from Category III MDSPGP-2 verifications, 17 of the projects received a "hit" from MDE's GIS screening. Of these 17 files, there was no documentation in 4 files indicating whether the presence of historic resource issues was addressed. The Corps evaluator often times assumed there were no historic resource issues when there was no response by MHT to the agency notification process. It is assumed that this is typical of all Category III MDSPGP-2 verifications.

*The MDSPGP-2 and Section 404(b)(1) Compliance:* The basic structure and design of the MDE permitting program provides an appropriate framework for compliance with the 404(b)(1) Guidelines given the specific and parallel language of the State evaluation criteria. The State regulatory program, in conjunction with the Federal regulatory program, provides a greater level of protection for aquatic resources because the State program regulates certain activities and areas that the Federal program does not. Similarly, the Federal program regulates certain activities and areas that the State program does not. Consequently, the two programs serve to complement one another when working together in partnership under the MDSPGP-2. The MDSPGP-2 has incorporated measures to maintain compliance with the 404(b)(1) Guidelines. By reducing the upper impact limit from five to one acre, projects with the greatest inherent potential for more than minimal impacts due to their scope were removed from the MDSPGP-2 process. We also believe that this lower impact level for MDSPGP-2 has the added benefit of encouraging applicants to reduce their overall wetland impacts in order to qualify for the MDSPGP-2. In addition, the MDSPGP-2 process insures a single and complete review process for projects with multiple components or phases.

Interagency pre-application meetings remain an important component of the permit process. Coordination between Corps and MDE staffs is critical to the success of the MDSPGP-2 and working relationships at the field level are a powerful tool in helping to implement the avoidance and minimization goals and requirements of the 404(b)(1) Guidelines.

A random file review for purposes of this monitoring effort revealed that on several occasions mis-categorization of applications reduced the effectiveness of the MDSPGP-2 because appropriate avoidance and minimization of impacts was not achieved. Had the applications been categorized correctly, the activity-specific conditions of the MDSPGP-2 would have ensured that the work was authorized in accordance with the 404(b)(1) Guidelines.

Each activity under Category I has general conditions and activity-specific conditions that meet the 404(b)(1) Guidelines. Similarly, Category III activities have general conditions and specific conditions (on a case-by-case basis) that also comply with the 404(b)(1) Guidelines. Consequently, the MDSPGP-2 is effective in authorizing only projects with minimal individual and cumulative adverse effects on the aquatic environment.

Based upon the information evaluated from October 1, 2001 to September 30, 2003, the Corps has determined that except for the few cases where applications were mis-categorized, the discharges authorized by the MDSPGP-2 are in compliance with the 404(b)(1) Guidelines.

## **VII. Mitigation**

Generally, compensatory mitigation is required after the applicant has demonstrated that either tidal or nontidal wetland losses or alterations can not be avoided or further minimized. All permanent tidal or nontidal wetland impacts are mitigated for either by the permittee or through the State's tidal or nontidal wetland compensation fund, as required by the special condition of the MDSPGP-2 verification and/or the State authorization.

a) *State Mitigation for Permitted Impacts to Tidal Wetlands:* MDE reported for Year 1 that a total of 0.73 acres of tidal wetland impact was approved of the requested 0.82 acres. A total of 0.12 acres of tidal wetland mitigation was required and a total of 4.70 acres has been established. For Year 2, 0.08 acres of tidal wetland impact was approved of the requested 1.28 acres. A total of 0.02 acres of tidal wetland mitigation was required and a total of 7.05 acres has been established.

b) *State Mitigation for Permitted Impacts to Nontidal Wetlands:* During the permit process, applicants are required to avoid and minimize impacts and then submit proposals to replace unavoidable, lost acreage and functions. These proposals (Phase I mitigation plans) vary in terms of their watershed locations and may be on-site, off-site, in-kind, out-of-kind, or a combination. These mitigation proposals are evaluated by MDE and/or the Corps and either approved or disapproved. If approved, a detailed Phase II mitigation plan is required. If the permittee is not able to provide their own mitigation project, they may be allowed to purchase credits from an approved wetlands mitigation bank or pay into the State's Nontidal Wetlands Compensation Fund. Each proposal for mitigation is evaluated on a case-by-case basis, depending on size, watershed location, availability of wetland banks, etc. After approval of the Phase II mitigation plan, permittees are required to construct and plant their mitigation projects and submit monitoring reports to MDE, and the Corps for specific projects, for five years.

*Nontidal Wetlands Compensation Fund:* MDE may accept payments to the Nontidal Wetlands Compensation Fund when permitted impacts are less than one acre, in-kind mitigation is technically infeasible, or a site search by the permittee is unsuccessful in locating an acceptable mitigation site within the county of the impact. These funds are then used by MDE to construct programmatic wetland mitigation projects in Maryland. Since 1992, 46 wetland creation, restoration, and enhancement projects have been constructed and planted on private and public land. In the two-year period between September 30, 2001 and October 1, 2003, approximately 100 acres of palustrine, forested wetland (PFO), 25 acres of palustrine, scrub-shrub wetland (PSS) and 2 acres of palustrine, emergent wetland (PEM) were restored. There were 59 acres of Wetlands of Special State Concern enhanced through selective management of undesirable vegetation.

## MDE NONTIDAL WETLAND MITIGATION SUMMARY

YEAR 1 (10/1/2001 - 9/30/2002)

YEAR 2 (10/1/2002 - 9/30/2003)

	Losses (AC)	Gains (AC)		Losses (AC)	Gains (AC)
PFO	19.14	14.22	PFO	28.84	47.37
PSS	1.59	0.69	PSS	1.06	1.75
PEM	9.68	5.69	PEM	11.19	12.8
Farmed	1.87	0	LMA	0.05	0
LMA	0.03	0			

(WETLAND TYPES: PFO=Palustrine Forested; PSS=Palustrine Scrub-Shrub; PEM=Palustrine Emergent; FARMED=wetland such as part of crop field; LMA=Landscape Management Area, such as wetlands maintained as lawn)

### 10-01-2001 TO 09-30-2003 MITIGATION REQUIRED SUMMARY

#### MITIGATION REQUIRED (SF)

	<u>PERMITTEE</u>	<u>CONSOLIDATED</u>	<u>COMP. FUND</u>	<u>TOTAL</u>
OCT-DEC 2001	101669	97604	55735	255008
JAN-MAR 2002	54431	59485	72894	186810
APR-JUN 2002	82986	38502	20906	142394
JUL-SEP 2002	249331	17274	45565	312170
OCT-DEC 2002	285427	44916	34155	364498
JAN-MAR 2003	1149714	5320	106300	1261334
APR-JUN 2003	34612	8816	214636	258064
JUL-SEP 2003	323809	380202	146958	850969
TOTAL	2281979	652119	697149	3631247

#### MITIGATION REQUIRED (AC)

	<u>PERMITTEE</u>	<u>CONSOLIDATED</u>	<u>COMP. FUND</u>	<u>TOTAL</u>
OCT-DEC 2001	2.33	2.24	1.28	5.85
JAN-MAR 2002	1.25	1.37	1.67	4.29
APR-JUN 2002	1.91	0.88	0.48	3.27
JUL-SEP 2002	5.72	0.40	1.05	7.17
OCT-DEC 2002	6.55	1.03	0.78	8.37
JAN-MAR 2003	26.39	0.12	2.44	28.96
APR-JUN 2003	0.79	0.20	4.93	5.92
JUL-SEP 2003	7.43	8.73	3.37	19.54
TOTAL	52.39	14.97	16.00	83.36

("Permittee" means that the permittee is responsible for performing mitigation on the project site or at an approved off-site location. "Consolidated" is an in-lieu fee mitigation site constructed and administered by a private entity. "Comp fund" sites are constructed and administered by MDE.)



## **VIII. Compliance and Enforcement**

DA authorization is required for any discharge of dredged and/or fill material into Waters of the United States including jurisdictional wetlands. The Corps has the lead on enforcement cases for Section 301 of the Clean Water Act (CWA) violation in Maryland. The lead was established through the 1989 National Memorandum of Agreement but EPA still remains the primary authority for enforcement under the CWA.

Work that is performed involving a discharge of fill material and is in noncompliance with a DA permit is considered a violation of Section 404 of the CWA. In this situation, the Corps is the lead Federal agency responsible for investigation and resolution of any violation of the permit authorization, which can include issuance of administrative penalties (33(CFR 326.6)).

The Corps is the only enforcement agency responsible for Section 10 of the Rivers and Harbor Act of 1899 violations and permit noncompliance. This includes all work performed in, over and under navigable waters of the United States.

The enforcement and compliance section of the MDSPGP-2 SOP identifies that all enforcement cases, including after-the-fact (ATF) authorizations, which could qualify for verification under MDSPGP-2, must first be coordinated with the Corps enforcement officers. All efforts are made between MDE and the Corps to bring the violation into compliance with the MDSPGP-2 and resolved voluntarily.

Data for enforcement and compliance activities is from the period October 1, 2001 to September 30, 2003. The numbers are based on RAMS data, with supplemental input by the Corps enforcement officer.

The RAMS data from October 1, 2001 to September 30, 2003 shows that there were 45 noncompliance actions taken. There were a total of 153 unauthorized enforcement actions initiated by the Corps in this time period. A portion of these actions were for projects that were constructed in non-compliance with the MDSPGP-2 verification obtained for the project.

As a condition of the MDSPGP-2, every permittee is to receive, as an attachment to their MDSPGP-2 verification, a self-certification form which must be filled out upon completion of the authorized work and any required mitigation, and returned to the Corps. It appears that a relatively small number of forms (less than 25%) have been completed and returned. These self-certification forms will be an area of focus for future permit compliance.

## IX. Conclusions and Recommendations

Our review of the summary tables, Tables 1 and 2, for Year 1 (October 1, 2001 through September 30, 2002) and Year 2 (October 1, 2002 through September 30, 2003) of the MDSPGP-2 and the RAMS data summary table, Table 3, led us to the following conclusions:

- Of the total individual tidal Category I activity verifications, approximately 60% were for piers, 16% were for revetments, 15% were for replacement bulkheads, 3% were for tidal marsh creation, and 2% were for armoring. These five tidal activities account for approximately 96% of the total individual tidal Category I activity verifications. These five tidal activities also account for 76% of the combined total individual tidal and nontidal Category I activity verifications for the two years. (MDE data)
- Of the total nontidal Category I activity verifications, approximately 33% were for minor nontidal fill, 20% were for general maintenance, 20% were for road crossings, 12% were for utility lines, and 6% were for nontidal bank stabilization. These five nontidal activities account for approximately 91% of the individual nontidal Category I activity verifications and 19% of the combined total individual tidal and nontidal Category I activity verifications. (MDE data)
- Of the total MDSPGP-2 verifications for the two-year period, 73.4% were for tidal projects. (RAMS data)
- Of the total Category I and Category III tidal MDSPGP-2 verifications by application, 12% were reviewed by both the Corps and MDE with resource agency coordination under the Category III process. (RAMS data)
- Of the total Category I and Category III nontidal MDSPGP-2 verifications by application, 29% were reviewed by both the Corps and MDE with resource agency coordination under the Category III process. (RAMS data)
- Of the total number of tidal applications receiving MDSPGP-2 Category III verification, the IIIB process was the dominant process (58% of Category III tidal applications). Under the IIIB process, MDE is responsible for publishing the joint public notice, which provides for both resource agency and public review. (RAMS data)
- Of the total number of nontidal applications receiving MDSPGP-2 Category III verification, the IIIA process was the dominant process (68% of Category III nontidal applications). Under the IIIA process, the Corps is responsible for coordination with the resource agencies on these projects. There is no public review under the Category IIIA process. (RAMS data)
- Of the total MDSPGP-2 verifications for the two-year period, 83% were Category I verifications (review by MDE only) and 17% were Category III verifications (review by MDE and Corps). (RAMS data)

Observations drawn from the review of the summary tables, Tables 1 and 2, concerning verifications under the MDSPGP-2 during the first two years are:

- Of the 17 counties that have tidal waters, approximately 50% of the total Category I and 50% of the Category III tidal applications receiving MDSPGP-2 verifications were issued for projects in only two counties, Anne Arundel County and Worcester County.
- There were 13 Category I activities that were not used during the first 2 years of the MDSPGP-2. This may be partly due to the fact that the majority of the projects under a particular activity,

such as the one for maintenance for tidal roadside ditches, I(C)4, or maintenance of mosquito control ditches, I(C)5, exceed the activity's impact limitations and/or activity-specific conditions.

- There were nine Category I authorizations that were inappropriately permitted under a Category I activity which is limited to either tidal or nontidal waters only. Of these nine, five were for piers in nontidal waters and the activity used for permitting is applicable to tidal waters only. Generally, the Corps does not regulate piers constructed in nontidal waters, and therefore, these piers may not have required MDSPGP-2 authorization. The specifics of these nine projects are not known from the MDE reports. The concern is that authorization under the wrong activity may preclude the project from being appropriately reviewed as a Category III project, or impacts may not be adequately minimized since the appropriate activity-specific conditions were not included with the MDSPGP-2 authorization.
- Condition (iv) of the minor nontidal fill activity, I(D)1, states that this activity does not authorize types of work for which there are other specific Category I activities, such as road crossings, utility lines, etc. However, it appears from MDE's two years of data that this activity was used in Worcester County almost exclusively (except for a few maintenance activities and a road crossing) in Years 1 and 2 to authorize nontidal impacts, and in Queen Annes County it was used exclusively in Year 2. The concern is that authorization under the wrong activity may preclude the project from being appropriately reviewed as a Category III project, or impacts may not be adequately minimized since the appropriate activity-specific conditions were not included with the MDSPGP-2 authorization. One recommendation to consider for a future version of the MDSPGP, which would simplify the MDSPGP while ensuring that all activities are adequately minimized, is the development of one activity that covers all these types of work and includes all the activity-specific conditions for each type of work.

Other observations drawn from the review of files and RAMS data concerning verifications under the MDSPGP-2 during the first two years are:

- Based on our preliminary review of copies of MDE's authorizations with MDSPGP-2 verifications provided to the Corps of the randomly selected 107 Category I files, it appears that 10 were not authorized under the correct Category I activity. In addition, it appears there were 6 Category I authorizations that should have been categorized and reviewed as a Category III. Due to limited information and/or poor plans provided with the MDSPGP-2 authorization copies, a final determination as to the correct activity or category requires the review of MDE's files.
- Condition 6 of the MDSPGP-2 General Conditions states that the utility line activity, I(D)2, may not be stacked or combined with any other Category I activity. A review of the RAMS data indicates that there were 6 projects that received verification under the I(D)2 activity and another Category I activity. Due to limited information and/or poor plans provided with the MDSPGP-2 authorization copies, a final determination as to the correct activity or category would require the review of MDE's files. Any single and complete project with both utility line impact(s) and other Category I activity(s), must be reviewed as a Category III project.
- Using the District's GIS capabilities and RAMS data, 4 tidal projects out of a potential 7 were identified to be within 150 feet of a federal channel and appear to have received Category I authorization without Corps' review for potential impacts to the federal channel. The MDSPGP-2 requires that these projects be reviewed under the Category II process which requires coordination with the Corps before MDE finalizes the Category I authorization.

- The RAMS database shows that the Corps performed 843 individual jurisdictional determinations during this two-year monitoring period, which involves extensive field work verifying stream and wetland limits, predominantly in nontidal areas. In addition, the Corps' review of 71 projects concluded that they were not subject to Corps jurisdiction and therefore did not require a DA permit, such as the MDSPGP-2.

The largest number of verifications under the MDSPGP-2 are comprised of Category I activities and thereby achieves the greatest reduction in duplication of effort by the two agencies. Based on the data provided by MDE's monitoring reports and the Corps' database, a bulk (approximately 73%) of the verifications of tidal and nontidal projects under both Categories I and III of the MDSPGP-2 have been applied to applications for tidal projects. Of these, only approximately 12% had joint review by the two agencies with some form of commenting opportunity. Often times, MDE is responsible for publishing the joint public notice for these tidal projects as a result of the State's regulatory requirements. This is a significant reduction in duplicative agency review for projects that have been determined in the Corps' decision document to have minimal adverse environmental impacts. It should be noted that, for the Corps, the MDSPGP-2 agency coordination is abbreviated compared to that required under the individual permit basis, and similar to the Nationwide Permit's requirements for agency review. On the other hand, nontidal projects have required a bit more agency coordination (29%) with the Category III process with the agency notification process often the Corps' responsibility. As noted in the MDSPGP-2 decision document, this need for more coordination is likely more attributable to the nature of the nontidal aquatic resources and the potential that certain identified activities may have cumulative adverse effects on the environment.

The limits and conditions of the various Category I activities may also serve as an incentive to project proponents to avoid and minimize impacts to aquatic resources, allowing them to go through an expedited review. This would be preferred by prospective applicants rather than the Category III review process and results in minimal individual and cumulative adverse aquatic resource impacts.

The Category II process insures that those Category I-type projects that are exempted or grandfathered by MDE, or those that are in or near a federally authorized civil works project, will be given an expedited review and authorization. One recommendation is to improve the screening process of new applications, i.e. by GIS, in identifying those projects that may impact a federally authorized civil works project, such as a federal channel. The RAMS database also indicates that there may have been some Category II projects that qualified for Category I verification but were instead reviewed with an agency notification process, and verified as a Category III by some Corps evaluators. This Category II process is confusing and should be addressed when developing the next version of the MDSPGP.

The MDSPGP-2 is overall compliant with Federal laws and regulations. There has been recent coordination with resource agencies to ensure consideration and inclusion of any comments they may have concerning the three stated goals of this report. MD DNR, Natural Heritage Program has stated that there have been instances where MDE has authorized a project under the MDSPGP-2 without their ability to comment and there were known state and federal endangered species present. They recommended, and the Corps concurs, that previously discussed revisions to the Standard Operating Procedure (SOP) for the Endangered Species Coordination be revisited and finalized. The Corps did not receive any comments from the other resource agencies concerning their agency's MDSPGP-2 experience during the first 2 years of its use.

The Corps of Engineers, Baltimore District has determined that overall, (1) the MDSPGP-2 meets its intended goal of reducing duplication of permit application evaluation by both MDE and the Corps; (2) verifications under the MDSPGP-2 comply with applicable federal laws and regulations; and (3) only projects with minimal adverse environmental effects have been verified.

Based on this determination, continuation of the use of the MDSPGP-2 is warranted in its current form, and with changes to the SOP as identified above and made subsequent to this report, for the balance of the MDSPGP-2 five-year term.